

Assembly Bill No. 2275

Passed the Assembly August 26, 2004

Chief Clerk of the Assembly

Passed the Senate August 25, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to repeal and add Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of the Government Code, relating to state civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2275, Dymally. Equal opportunity programs.

The State Civil Service Act requires each state agency and department to establish an effective affirmative action program with specified components, and to establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Existing law requires the State Personnel Board to conduct specified activities in this regard.

Portions of these provisions have been held to be in violation of the California Constitution and the United States Constitution.

This bill would repeal these provisions. It instead would require each state agency to establish an equal opportunity program to ensure that the state policy of providing equal opportunity to all job applicants and employees, based on merit, and prohibiting illegal discrimination in every aspect of personnel policies and employment practices, is fully implemented. It would require the State Personnel Board to conduct specified activities in this regard.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 2. Chapter 12 (commencing with Section 19790) is added to Part 2 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 12. STATE CIVIL SERVICE EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM

19790. (a) It is the policy of the state to provide equal employment opportunity to all job applicants and employees,



based on merit, and to prohibit illegal discrimination in every aspect of personnel policies and employment practices, including, but not limited to, recruitment, examining, hiring, promotion, training, work assignments, work environment, and other benefits and privileges of employment.

(b) Each state agency is responsible for establishing an effective equal employment opportunity program to ensure that this policy is fully implemented and that no harassing or retaliatory actions are taken against applicants or employees for exercising their rights under this policy.

19791. The State Personnel Board shall do all of the following:

(a) Provide statewide program leadership, coordination, monitoring, and enforcement of this chapter.

(b) Develop, implement, and maintain equal employment opportunity guidelines.

(c) Provide technical assistance to state agencies in the development and implementation of their equal employment opportunity programs.

(d) Review and evaluate departmental equal employment opportunity programs to ensure that they comply with state and federal statutes and regulations.

(e) Establish requirements for broad, inclusive recruitment efforts to ensure equal employment opportunity to all state job applicants and employees.

(f) Provide equal employment opportunity compliance training to state agency equal employment opportunity officers and their staff.

(g) Review, examine the validity of, and update qualifications standards and selection devices, including oral appraisal panels and career advancement programs.

(h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of equal employment opportunity programs within the state civil service. The statistical information shall include specific data to determine the significant underutilization of specific groups based on race, ethnicity, gender, and disability. The statistical information shall be made available during normal working hours to all interested persons. Data generated on a regular basis shall include, but not be limited to, the following:



(1) Current state civil service workforce composition by race, ethnicity, gender, disability, age, department, salary level, occupation, and attrition rates by occupation.

(2) Current local and regional workforce and population data for groups based on race, ethnicity, gender, and disability.

(i) Analyze data that shall include, but not be limited to, all of the following:

(1) Data relating to the utilization of employees by state agency based on race, ethnicity, gender, and disability, compared to their current representation in the relevant labor force.

(2) Turnover data by state agency and occupation.

(3) Data relating to salary administration, including, but not limited to, average salaries for groups based on race, ethnicity, gender, and disability.

(4) Data on employee age, and salary level for groups based on race, ethnicity, gender, and disability.

(5) Data on the number of persons, categorized by race, ethnicity, gender, and disability, who are recruited for, participate in, and pass state civil service examinations. The data shall be analyzed pursuant to Sections 19704 and 19705.

(6) Data on the job classifications, geographic locations, separations, salaries, and other conditions of employment that provide additional information about the composition of the state civil service workforce.

19792. (a) By November 15 of each year, the State Personnel Board shall submit to the Governor, the Legislature, and the Department of Finance, all of the following information:

(1) The number of state employees categorized by race, ethnicity, gender, and disability for the current year, and trend information for at least the last five-year period.

(2) The number of state employees categorized by race, ethnicity, gender, and disability within major occupation categories.

(3) Hiring, transfer, and promotional rates of state employees categorized by race, ethnicity, gender, and disability.

(4) The distribution of state employees by salary level categorized by race, ethnicity, gender, and disability, reported in increments of ten thousand dollars (\$10,000).



(5) The amount and extent of significant underutilization in each state agency in the state civil service categorized by race, ethnicity, gender, and disability.

(6) Any other data that reflects the status of the state civil service workforce deemed appropriate by the board.

(b) The report shall also include information to the Legislature of laws that discriminate or have the effect of discrimination on the basis of political affiliation or any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1. The Legislature shall evaluate the equal employment opportunity efforts of state agencies during its evaluation of the Budget Bill.

19793. Each state agency shall do all of the following:

(a) Establish an effective equal employment opportunity program and comply with the requirements of this chapter and any associated State Personnel Board rules and regulations.

(b) Annually review its workforce and identify any significant underutilization of employees based on race, ethnicity, gender, or disability that may indicate employment discrimination. Where significant underutilization is found, the state agency shall examine, by classification, recruitment rates, passing rates at each step of the selection process, and hiring and promotional rates, to identify the causes of this underutilization, and shall take action to remove any barrier to equal employment. This action may include, but need not be limited to, eliminating non-job-related requirements, expanding outreach, revising examinations to eliminate discriminatory material or processes, and validating selection methods. The state agency workforce analysis and actions taken or planned shall be documented and submitted to the board for review and approval by July 1 of each year. Information about the state agency workforce analysis and actions taken, including specific outreach efforts, shall be available to the public upon request.

(c) Develop, update annually, and implement an equal employment opportunity plan approved by the State Personnel Board that shall include all of the following:

(1) A policy statement, signed by the appointing power, committing to nondiscriminatory employment practices, equal employment opportunity, and a workplace free of employee harassment and retaliation for the exercise of civil rights.



(2) Procedures for filing and processing discrimination complaints within the state agency, consistent with board requirements, and for promptly stopping and remedying any discrimination or harassment found to have occurred.

(3) Procedures for providing reasonable accommodation to applicants and employees with disabilities and for filing appeals from denial of reasonable accommodation requests.

(4) Procedures for providing equal upward mobility and promotional opportunities to state employees.

(5) An annual workforce analysis of its employees by race, ethnicity, gender, and disability, and by occupational category and salary levels, with identification of significant underutilization problems, and the specific actions planned to remove barriers to equal employment.

(d) Submit information on the number and type of discrimination complaints received by the state agency or department and other pertinent data to the board on a quarterly basis in accordance with board guidelines.

(e) Cooperate with the State Personnel Board when the board conducts compliance reviews of the state agency's equal employment opportunity programs and discrimination complaint processes. This shall include providing the board with access to any files and records needed to complete a compliance review consistent with subdivisions (o) and (p) of Section 1798.24 of the Civil Code.

19794. In cooperation with the State Personnel Board, the appointing power of each state agency shall be responsible for monitoring the effectiveness of the equal employment opportunity program of the state agency.

19795. (a) Each appointing power shall appoint an equal employment opportunity officer who meets standards established by the State Personnel Board, to develop, implement, coordinate, and monitor the state agency equal employment opportunity plan. Except in a state agency with fewer than 500 employees, the equal employment opportunity officer shall not be the personnel officer, and shall function independent of other human resource and line programs to maintain objectivity and fairness. Regardless of state agency size, the equal employment opportunity officer shall at all times report to and have direct access to the state agency secretary



or appointing power in carrying out its equal employment opportunity responsibilities.

(b) The state agency equal employment opportunity officer shall, among other duties, manage the state agency's discrimination complaint process, review agency employment policies and practices for compliance with nondiscrimination laws, analyze and report on appointments of employees, request appropriate action of the appointing power, submit an evaluation of the effectiveness of the total equal employment opportunity program to the State Personnel Board annually, and perform other duties necessary for the effective implementation of the state agency equal employment opportunity plans.

19796. Bureau or division chiefs within a state agency shall be accountable to the agency secretary or appointing power for the effectiveness and results of the equal employment opportunity program within their division or bureau. All agency managers and supervisors shall provide program support and take all positive action necessary to ensure and advance equal employment opportunity at their respective levels.

19797. (a) Each state agency shall establish an equal employment opportunity committee to advise the appointing power on nondiscrimination and equal employment opportunity issues. A state agency may establish its own operating procedures governing the number and selection of members, frequency of meetings, and other administrative matters.

(b) Each state agency shall establish a committee to advise the state agency secretary or appointing power about issues of concern to employees with disabilities. The committee shall be separate from any equal employment opportunity committee that may be established. Members of the committee shall be composed of employees of the state agency who have a disability or who have an interest in disability issues. State agencies may establish their own operating procedures governing the number and selection of members, frequency of meetings, and other administrative matters.

19798. In establishing order and subdivisions of layoff and reemployment, the State Personnel Board, when it finds past discriminatory hiring practices, may authorize modification of the order of layoff, in accordance with board rules, only if failure to do so by a department would result in ineligibility for a federal



program with a loss of federal funds or if required by federal law or the United States Constitution, or both.

19799. When any state agency conducts any survey as to the ancestry or ethnic origin of state civil service employees, or maintains any statistical tabulation of minority group employees, it shall use separate collection categories for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian, in the survey or tabulation.



Approved _____, 2004

Governor

